

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

EDWARD WHEATON, )  
Plaintiff, )  
v. )  
ROBERT H. IRWIN MOTORS, INC., )  
d/b/a IRWIN TOYOTA, RICK GLIDDEN, )  
CHRIS IRWIN, EDWARD KELLY, )  
RONALD O'CONNOR and )  
WAYNE THAYER, )  
Defendants. )

CASE NO.: 1:20-cv-00925

PLAINTIFF'S MOTION TO VACATE DISMISSAL

NOW COMES, the Plaintiff, Edward Wheaton, in the above-entitled matter, and pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure, and respectfully moves this Honorable Court to Vacate the Dismissal entered by the Court on November 11, 2021, on the grounds of mistake, inadvertence, or any other reason justifying relief from the operation of the judgment for the following reasons:

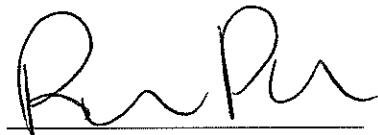
1. The email with the Notice of Electronic Filing that a Motion for Sanctions against Plaintiff and an Order entered by the Court was inadvertently sent to Counsel for the Plaintiff's spam folder and not found until January 06, 2022.
2. The Order stated that Plaintiff shall file a written response to the motion on or before November 08, 2021.
3. On November 10, 2021, when the Court did not receive a response from the Plaintiff, a Judgment was made to dismiss the case.
4. Due to the email going into Counsel's spam folder, it was inadvertently overlooked.
5. If this Motion to Vacate the Dismissal is not granted it would be devastating to the Plaintiff.

WHEREFORE, for the above reasons, the Plaintiff respectfully requests that this Honorable Court grant this Motion to Vacate the Dismissal.

Respectfully submitted.

Edward Wheaton  
By his Attorney,

Dated: 1/13/22



Roger A. Peace, Esq. (BBO#267729)  
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AFFIDAVIT OF ROGER A. PEACE IN SUPPORT OF PLAINTIFF'S MOTION TO VACATE  
DISMISSAL

NOW COMES, Roger A. Peace, Attorney for the Plaintiff, Edward Wheaton, in the above-entitled matter and state under the pains and penalties of perjury the following facts to support this Motion to Vacate the Dismissal:

1. My name is Roger A. Peace. I am licensed to practice law in the Commonwealth of Massachusetts and the State of New Hampshire.
2. I represent the Plaintiff, Edward Wheaton, in connection with the above matter.
3. On or about January 06, 2021, I saw an email in my spam folder from nef@nhd.uscourts.gov. The email was regarding a Notice of Electronic Filing that a Motion for Sanctions against Plaintiff and an Order was entered by the Court.
4. The Order stated that Plaintiff shall file a written response to the motion on or before November 08, 2021.
5. On November 10, 2021, when the Court did not receive a response from the Plaintiff, a Judgment was made to dismiss the case.
6. Due to the email being sent inadvertently to my spam folder, it was overlooked.

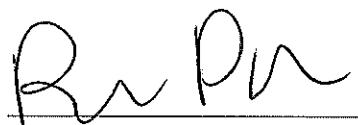
7. I never received a notification of Defendants filing of their Motion for Sanctions against the Plaintiff that was filed on or about September 10, 2021.
8. Plaintiff's Answers to Interrogatories propounded by Robert H. Irwin Motors, Inc. and Christopher Irwin were sent to Defendants Counsel on or about July 14, 2021.
9. Plaintiff's Answer to Interrogatories propounded by Rick Glidden, Edward Kelly, Ronald O'Connor, and Wayne Thayer were sent to Defendants Counsel on or about August 06, 2021.
10. Plaintiff's Responses to Request for Production of Documents propounded by Robert H. Irwin Motors, Inc. and Christopher Irwin were sent to Defendants Counsel on or about July 14, 2021.
11. Plaintiff's Responses to Request for Production of Documents propounded by Rick Glidden, Edward Kelly, Ronald O'Connor, and Wayne Thayer were sent to Defendants Counsel on or about August 09, 2021.
12. I, as Counsel for the Plaintiff, request that this Honorable Court allow this Motion to Vacate which is in the interest of judicial fairness and unjust enrichment to the Plaintiff, and allow Plaintiff a day in court.

Signed under the pains and penalties of perjury:

Respectfully submitted.

Edward Wheaton  
By his Attorney,

Dated: 1/13/2022



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